IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 921 OF 2007

IN

APPEAL NO. 118 OF 2006

AND

APPEAL NO. 118 OF 2007

IN

SUIT NO. 1097 OF 1983

Allahabad Bank ... Appellants

(Orig. Plaintiffs)

Versus

Rewachand Ladharam Ramchandani & Anr. Respondents

(Orig. Defendants)

Mr. Shailesh Shah i/b. Jayesh Patel for the Appellants.

Mr. Jaydeep Deo for Respondents.

CORAM: D.K.DESHMUKH &

J.H.BHATIA,JJ.

DATE : 10th September, 2007.

P.C.

1. When the Court was hearing this Notice of Motion which is taken out by the appellants for stay of the operation of the order impugned in the Appeal, the Division Bench then hearing the appeal found that there is virtually no substance in the Appeal and that the Appeal appears to have been admitted by mistake by the Court. Therefore, a show cause notice was issued to the appellants as to why the order of admission of the appeal should not be recalled. Pursuant to that order, we have heard learned Counsel appearing for both the sides.

2. The admitted position is that the respondent No.1 is the owner of a flat. That flat was given on license by the defendant No.1 to the plaintiffs. The date of agreement of license is dated 1st August, 1978. As per the terms of the license agreement, at the end of the license period, the licensee was to vacate the flat. The licence was to come to an end admittedly on 31st July, 1981. Clause 21 of the license agreement provides that if the licensee does not vacate the flat on expiry of the license period, then the licensee will be bound to buy over the flat for Rs.2 lacs. It appears that on 26th June, 1981, the appellants assuming that they have an option of purchasing the flat, issued a notice exercising the option of purchase of the flat and asking the defendant No.1 to execute sale deed of the flat in

their favour. The defendant No.1 did not execute the sale deed. Therefore, Civil Suit was filed seeking a decree of specific performance of the agreement. What is interesting is that though the license was not renewed, the plaintiffs continued to occupy the flat. Civil Suit No.1097 of 1983 filed by the appellants was decided by a learned Single Judge of this Court by judgment dated 30.11.2006. The Court, on interpretion of various clauses of the agreement, held that the agreement does not give any option to the licensee to purchase the flat. The license agreement makes the licensee bound to purchase the flat if such an offer is made to the licensee by the licensor. The Court also held that even assuming that under the license agreement, there is an option to the licensee to purchase the flat, that option as per the agreement, can be exercised only after the expiry of the licence period. In the instant case, the option has been exercised by the licensee during the currency of the license. The Court, therefore, held that the license agreement does not contain any agreement to sell the flat and, therefore, the suit has been dismissed.

3. Perusal of the Judgment shows that the learned Single Judge, after considering clauses 21 and 22 of the agreement between the parties, has held that there is no right to purchase given by the agreement. There is an

obligation created on the licensee to purchase the flat if an offer is made by the defendant No.1-licensor. After having gone through the agreement, we find ourselves in agreement with the construction placed by the learned Single Judge on the terms of the agreement. In any case, the minimum that can be said is that construction placed by the learned Single Judge on various clauses of the agreement is a possible construction and, therefore, the Appeal Court will not be justified in disturbing that construction. We further find that even accepting the interpretation placed by the licensee on clause 21 that the agreement has given an option to licensee also to purchase the flat, that right would have accrued only after the expiry of the license period and if the licensee continues in possession of the flat. In the present case, admittedly, that option has been exercised before expiry of the license period.

4. The learned Counsel appearing for the licensee relied on subsequent correspondence between the parties. Perusal of the subsequent correspondence shows that in none of the letters fresh option was exercised after June, 1981. The option in terms of clause 21 of the agreement on the assumption that such an option is available to the licensee was exercised in June, 1981 for the first and last time. The learned Single Judge,

in our opinion, therefore, has rightly held that even assuming that there is an option given to the licensee, it was not rightly exercised.

5. Taking overall view of the matter, therefore, we find that the Appeal does not deserve to be admitted. The order admitting the Appeal is, therefore, recalled. Appeal No.118 of 2007 and the Notice of Motion No.921 of 2007 are both disposed of.

(D.K.DESHMUKH,J)

(J.H.BHATIA,J.)